TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1944

No. 12

JIM SKIDMORE, ET AL., PETITIONERS,

vs.

SWIFT AND COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 2, 1943

CERTIORARI GRANTED MAY 29, 1944

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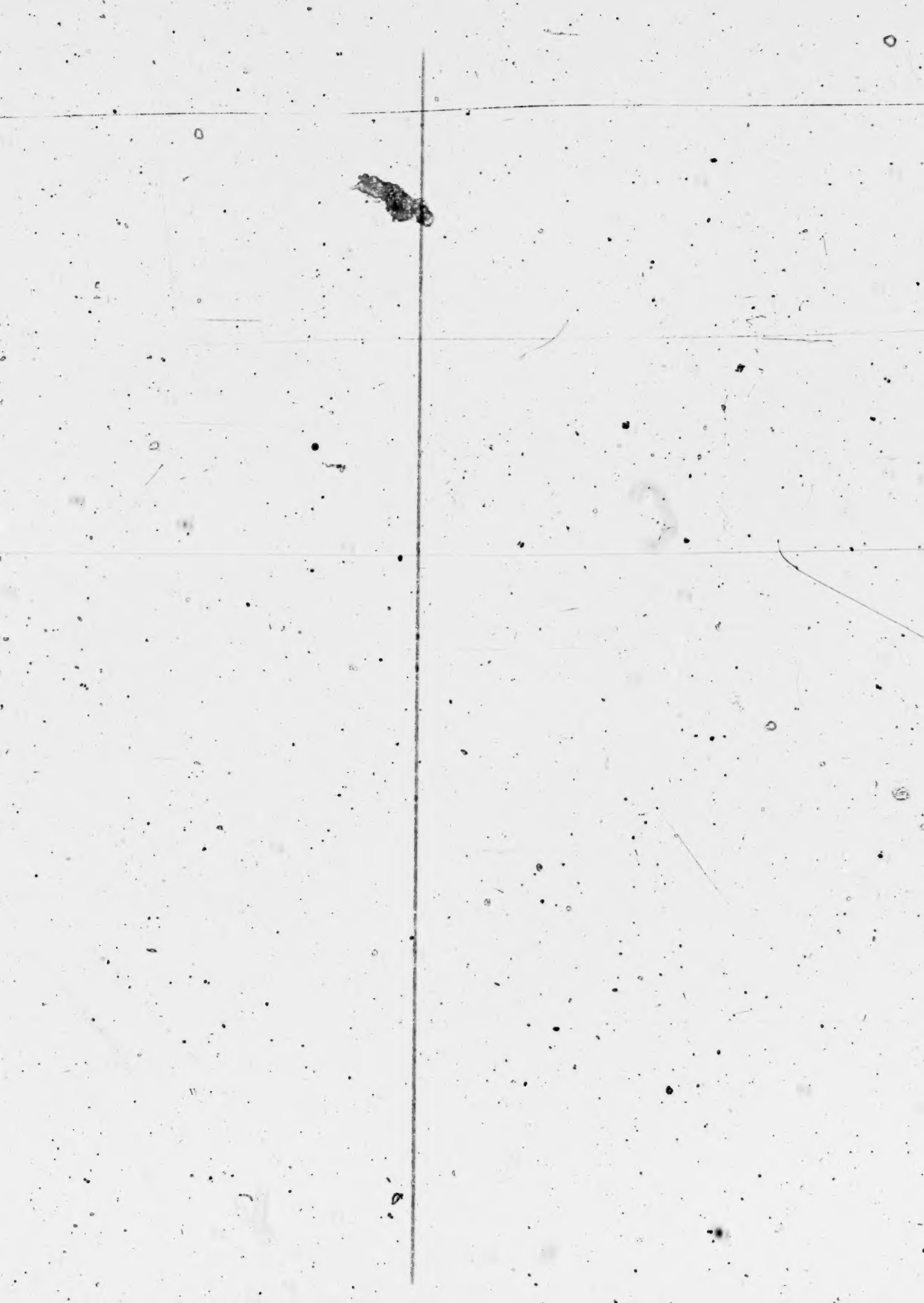

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CAPTION.

BE IT REMEMBERED that at a term of the District Court of the United States for the Northern District of Texas, begun and holden at Fort Worth, Texas, on the 9th day of March, A. D. 1942, and which term has not yet adjourned, the Honorable James C. Wilson, United States District Judge, presiding, the following cause came on for hearing and was heard, to-wit:

JIM SKIDMORE, ET AL.,

Plaintiffs,

versus

SWIFT AND COMPANY,

Defendant.

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ORIGINAL COMPLAINT.

Filed March 28, 1941.

(Title Omitted.)

I.

Plaintiff, who is a citizen of the State of Texas, residing at Fort Worth, Tarrant County, Texas, and within said Judicial District, brings this action to recover from defendant unpaid overtime compensation in the amount of $4,600.60, and an additional equal amount of liquidated damages, pursuant to Section 16 (b) of the Fair Labor Standards Act of 1938, and for reasonable attorney's fees

provided by said Act, (Pub. No. 718, 75th Cong.; 52 Stat. 1060), hereinafter referred to as the Act.

II.

Jurisdiction is conferred on the Court by Section 41 (8), 28 U. S. C. A. (Judicial Code) 24, giving the District Court original jurisdiction "of all suits and proceedings arising under any law regulating commerce," and by Section 16 (b) of the Act.

III.

Defendant is a corporation organized and existing under and by virtue of the laws of the State of Illinois, and owns and operates a general packing-house industry in Fort Worth, Tarrant County, Texas, where plaintiff was at all times hereinafter alleged, employed by it, under and by virtue of a legal and valid franchise and of permit granted to it by the State of Texas, and that J. H. Hall is its duly authorized agent, also its General Manager of said Fort Worth Plant, upon whom citation may be served.

IV.

Defendant was at all times herein mentioned, engaged in the general packing-house business, purchasing cattle, sheep, goats, hogs, turkeys, chickens and guineas, milk, butter, eggs, feed-stuff, wheat, oats, flour, corn, also various kinds of vegetables, and various and many other such products and commodities for the purpose of manufacturing, curing, processing and converting into the finished product, and which the defendant has at all times, and still continues, to purchase, manufacture, cure, process and convert into by-products for the purpose of sale to the public generally; and especially has

the defendant during all such period of time, manufactured, processed and reprocessed, and prepared for sale and distribution, each and all of said products and by-products so manufactured and prepared by the defendant, for the purpose of selling the same to purchasers out of the State of Texas, and was at the time of the employment of the plaintiff, and still is, engaged in interstate commerce.

V.

Plaintiff further alleges that a great majority of the said goods, wares and merchandise so manufactured and processed by the defendant, as aforesaid, during the times hereinafter mentioned, were manufactured and processed and produced for interstate commerce, and that a portion greatly in excess of 50% thereof, has been sold, offered for transportation, transported, shipped and delivered to various consignees and purchasers in interstate commerce from the defendant's Plant at Fort Worth, Texas, where the plaintiff was employed, and were disposed of through purchasers at points outside of the State of Texas, for distribution and sale. The exact points to where said products were shipped, and the exact amount thereof, are not all known to plaintiff, but are well known to the defendant, its agents, servants, managers and operatives; and plaintiff here now serves notice upon the defendant to produce into Court all records within its possession which show, or tend to show all the transactions hereinabove referred to, including the amount of such products they have received, manufactured, processed and sold at and from said Fort Worth Plant; also to whom sold, when and how they were manufactured, processed and sold, and where the purchasers, and all other recipients thereof, were transacting business at the time they were sold, also the points of destination and names of all consignees of all such goods shipped by defendant from said Fort

Worth Plant, on or before three days before this cause of action is set for the first trial thereof, for the benefit of the plaintiff as evidence, otherwise secondary evidence will be introduced by the plaintiff to establish such facts.

VI.

Plaintiff further alleges that during the work-weeks beginning October 24th, 1938, and ending at the time plaintiff left the service of the defendant, which was on August 16th, 1940, defendant had in its employ, in said Fort Worth Plant, approximately 1,400 employees including men and women, in the manufacture, production and processing of such goods, wares and merchandise, above alleged, for interstate commerce.

VII.

Plaintiff further alleges that during the entire time he was so employed by the defendant, he was required by the defendant to be, and actually was, on duty and subject to call, greatly in excess of the maximum hours permitted by said Act, as hereinafter alleged, and is therefore entitled to compensation as provided by said Act, viz: (a) That it was the duty of the plaintiff, among other things, to operate the elevators maintained by the defendant in its said Plant, and thereby convey the raw material and manufactured and processed products above mentioned, from one place of production and processing to the other in said Plant, for the purpose of storage and otherwise which was a necessary part of the manufacturing, processing and preparing of all of said products for interstate commerce; (b) That in addition to said services, the plaintiff required the defendant to remain on duty as such employee, also as a watchman, for the protection of said raw materials, manufactured and processed products aforesaid, while the same were in the custody and possession

of the defendant in its said Plant, for the purpose of preserving the same for interstate shipment to the consignees, or purchasers thereof, or otherwise; (c) That in addition thereto, plaintiff was required by the defendant to remain on duty, not only for the purposes above alleged, but for the further purpose of acting as a fireman of the defendant, which required him to be on duty continuously as hereinafter alleged, for the purpose of protecting said manufactured and processed goods against any loss or damage by reason of fire, or other similar casualties, while the same were in and upon the premises of the defendant in said Fort Worth Plant.

VIII.

And plaintiff says that by reason of the services performed by him for the defendant as hereinabove alleged, it became necessary for plaintiff to work overtime, as is provided for by said Fair Labor Standards Act of 1938, as above alleged, for which he is entitled to time and one-half for all such overtime so performed by him, by reason of the premises and under the circumstances above alleged.

IX.

Plaintiff further alleges that during the time he worked for the defendant from October 24th, 1938, the effective date of said Act, to August 16, 1940, inclusive, the date he left its service, his agreed weekly wage was the sum of $27.00 per work-week of 44 and 42 hours respectively under the Act; which was all he has received from the defendant for such services actually rendered to defendant, except two weeks' paid vacation, allowed and paid to him by defendant, also one week, (5 days) when he was unjustly suspended from the service of defendant, during said period, for all of which he gives credit to de-

fendant. And plaintiff says that defendant is indebted to him for overtime in the following amounts, to wit:

From October 24, 1938, to May 2, 1939, plaintiff's weekly wage for a 44 hour work-week was $27.00, or 61 and 4 11 cents per hour. Plaintiff actually worked and or was on duty subject to call, 102 hours per week during this 27 week period, or 58 hours in excess of the 44 hour maximum for straight time pay. Defendant therefore owes plaintiff compensation for the above overtime as follows:

58 hours per week @ time and one-half or 92¢ per hour, totaling	$53.36
27 weeks @ $53.16 per week, totaling	1,440.72
Less one weeks vacation $27.00 × $53.16, totaling	80.36
Total due for period (Oct. 24, 1938, to May 2, 1939)	$1,360.36

From May 2, 1939, to October 24, 1939, plaintiff's weekly wage for a 44 hour work-week was $27.00, or 61 and 4 11 cents per hour. Plaintiff actually work and or was on duty subject to call 95 and 1 2 hours per week for this 25 week period, or 51 and ½ hours in excess of the 44 hour maximum straight time work-week. Defendant is therefore due plaintiff compensation for the above period as follows:

51½ hours per week at 92¢ per hour, totaling	$47.38
25 weeks @ $37.38 per week, totaling	$1,184.50
Less one week (laid off) 7-22 to 7-29, 1939, totaling	74.38
Total for said period (May 2, 1939, to Oct. 24, 1939)	$1,110.12

From October 24, 1939, to August 16, 1940, plaintiff's weekly wage for a 42 hour work-week was $27.00 or 64¢ per hour. Plaintiff actually worked and or was on duty subject to call 95½ hours per week during this 43 hour week period, or 53½ hours in excess of the 42 maximum for straight-time pay. Defendant therefore owes plaintiff compensation for the above overtime as follows:

53½ hours per week @ time and one-half, or 96¢ per hour, totaling	$51.36	
43 weeks @ $51.36 per week, totaling		2,208.48
Less one weeks vacation, $27.00 × $51.36, totaling		78.36
Total due for said period (Oct. 24, 1939, to Aug. 16, 1940)		$2,130.12

Recapitulation.

Oct. 24, 1938 to May 2, 1939	$1,360.36
May 2, 1939 to Oct. 24, 1939	1,110.12
Oct. 24, 1939 to Aug. 16, 1940	2,130.12
Grand total for the period from Oct. 24, 1938 to Aug. 16, 1940	$4,600.60

Wherefore, premises considered, plaintiff prays for citation to issue to the defendant as provided by law, and that upon a final hearing hereof, he have judgment against the defendant for his debt and damages in the sum of $4,600.60, plus an additional amount of liquidated damages of $4,600.60, for reasonable attorney's fees, as is provided by said Act; and for such legal interest, as to which he may be entitled; for all costs of suit herein incurred, and for all such other and further relief, general and special, at law and or in equity, to which plaintiff may show himself

entitled upon a trial hereof, and for which he will ever pray.

TOMMY FORBIS and DEE ESTES,
Attorneys for Plaintiff.
By TOMMY FORBIS.

909 Burkburnett Bldg.,
Fort Worth.

DEFENDANT'S FIRST AMENDED ORIGINAL ANSWER.

Filed May 5, 1941.

(Title Omitted.)

Now comes Swift and Company, defendant in the above entitled and numbered cause, and leave of the Court having been first sought and obtained, files this its First Amended Original Answer to plaintiff's Complaint, and would respectfully show the Court as follows:

1.

Defendant admits the allegations of paragraph I of the Complaint concerning the alleged purpose for which suit is brought, but denies the existence of the alleged unpaid overtime compensation and the asserted right to recover liquidated damages and attorney's fees.

2.

Defendant admits the allegations of paragraphs 2, 3, 4, 5 and 6 of the Complaint, with the exception of those in paragraph IV to the effect that defendant was engaged in purchasing turkeys, chickens and guineas, milk, butter,

eggs, feed stuff, wheat, oats, flour, corn and various kinds of vegetables, and various and many other such products and commodities, for the purpose of manufacturing, curing, processing and converting same into the finished product, etc., which it denies.

3.

As to paragraph VII of the Complaint, defendant denies the allegations thereof, down to that part designated as sub-paragraph (a); it admits the allegations of sub-paragraph (a); it denies the allegations of sub-paragraph (b); it denies the allegations of sub-paragraph (c), but admits that plaintiff was required to remain at the fire hall on defendant's premises, subject to call in the event of an emergency, such as fire, flood or other casualty, during certain periods of time hereinafter more fully set forth; however, it denies that plaintiff was required to be on duty continously, as alleged.

4.

Defendant denies the allegations of paragraph VIII of the Complaint.

5.

As to paragraph IX of the Complaint, defendant admits that during the time plaintiff worked for defendant from October 24, 1938 to August 16, 1940, inclusive, his agreed weekly cash wage was the sum of $27.00 per work-week, but denies that said agreed weekly wage was for a work-week of a regular or certain number of hours, determined either by agreement or custom, and further denies that said agreed weekly wage was the entire compensation which plaintiff received from defendant for services rendered, as alleged in the Complaint, which admission and

denial includes the first sentence of paragraph IX of the Complaint.

As to the allegations commencing with the second sentence of paragraph IX of the Complaint, defendant admits the arithmetical correctness of the calculations set forth therein, but denies the remainder of the allegations down to and inclusive of the prayer, and denies that if plaintiff is entitled to recover anything from defendant, that the method of computation or calculation employed by the plaintiff is the correct method of computation or calculation, to use.

In order to clarify the admission and denial contained in the foregoing paragraph, defendant denies that plaintiff actually worked and or was on duty subject to call for the number of hours per week during the three periods of time set forth in paragraph IX of the Complaint, but admits that plaintiff lived at the fire hall on defendant's premises, subject to call in the event of an emergency, such as fire, flood or other casualty, during certain periods of time, and under the circumstances hereinafter more fully set forth, and admits that, during the three periods of time set forth in said paragraph IX of the Complaint, plaintiff did stay on the premises of defendant approximately the number of hours per week alleged, in addition to the time spent working as an elevator operator.

6.

Defendant alleges that for a long time prior to October 24, 1938, and continuously since then, it maintained a fire hall on its premises, in charge of a foreman, an assistant foreman, and a sprinkler man, exclusively on fire duty, and in addition to these three men, it permitted five other workmen employed elsewhere in its plant as elevator operators, of whom plaintiff was one, to live in the fire

hall on defendant's premises during the hours they were off from duty as elevator operators, which duty as elevator operators occupied their time from 7:00 A. M., to 3:30 P. M., under oral agreements that they would be required to stay in, or close by, the fire hall; subject to call at any time in the event of an emergency, such as fire, flood or other casualty, with the exception that they were allowed one hour each morning, two hours each night, and two days and 2½ nights each week, and such other reasonable amount of time as they might desire, for meals, relaxation and entirely private pursuits, being free to come and go as they pleased, and not subject to call during these periods of time; that during the time they were required to be in or close by the fire hall, they were not required to perform any work, and had no duties whatever, except in emergencies, as aforesaid; that during such emergencies, they were paid for the time they were employed at a lawful rate.

The elevator operators who also served in the Fire Department, as aforesaid, were paid $27.00 per week, and were furnished lodging of the reasonable value of $5.00 per week, laundry of the reasonable value of 75c per week, and clothes, consisting of uniforms, of the reasonable value of $109.30.

That the Fire Hall building is equipped with suitable sleeping quarters, steam-heated and air-conditioned rooms, pool table, domino table and radio, for the convenience and recreation of the firemen, only bachelors are allowed to serve, and because of the advantages hereinbefore recited, service in the fire hall is much sought after by the defendant's employees; that plaintiff, sometime during the early part of the year 1937, voluntarily requested defendant that he be permitted to serve in its Fire Department, and on or about March 18, 1937, was assigned thereto on the terms and conditions above stated, and continuously

thereafter, until he voluntarily resigned, on or about August 16, 1940, and during the period of time involved herein, to-wit, from October 24, 1938 to August 16, 1940, a period of 95 weeks, he was furnished lodging of the reasonable value of $5.00 per week, laundry service of the reasonable value of 75c per week; and furnished certain clothes, consisting of a uniform, overcoat, various shirts and pants, all of the total value of $109.30, which he converted to his own use and benefit when he resigned, and has refused to return them to defendant, although demand has been made therefor.

That during the entire period of time involved herein, from October 24, 1938, to August 16, 1940, plaintiff, while serving as a fireman under the above described terms, conditions and circumstances, was required to answer only ten alarms, none of which required as much as an hour's time, and most of which required only about fifteen minutes time, but for all of which plaintiff was paid at a lawful rate; that during the entire period of time involved herein, plaintiff had no work or duties to perform as a fireman, except in answering the ten alarms, as above stated, and at all times had a normal night's sleep, ample time in which to eat meals, and ample time for relaxation and entirely private pursuits, being free to come and go, as he pleased, during the times above stated.

7.

Defendant says that all that part of plaintiff's cause of action, if any he had, accruing more than two years before the commencement of this suit, is barred by the statute of limitations of the State of Texas applicable thereto, being Revised Statutes 1925, Article 5528.

8.

Defendant says that in any event, under Section 7 (c) of said Fair Labor Standards Act of 1938, in the case of an employer engaged in handling, slaughtering or dressing, poultry or livestock, the provisions of Section 7 (a) of said Act, during a period or periods of not more than 14 work-weeks in the aggregate in any calendar year, do not apply to such an employer's employees in any place of employment where the employer is so engaged, and that during the entire period in question, plaintiff was employed during each work-week in a place of employment where the defendant was engaged in handling, slaughtering, or dressing poultry or live stock. Wherefore, the plaintiff's claim as asserted is to that extent excessive and proper credit should be allowed accordingly.

9.

Defendant denies that plaintiff was employed during any work-week involved herein for a number of hours greater than the number of hours spent acting as an elevator operator, and in answering fire alarms, as set forth in paragraph Six (6) of this answer, and defendant says that it has heretofore paid plaintiff for all of such work at a lawful rate, wherefore, plaintiff is not entitled to recover anything of defendant herein, but should the Court find that plaintiff was employed for work-weeks in excess of the number of hours spent acting as an elevator operator or answering fire alarms, as aforesaid, then the rate of pay at which plaintiff should be compensated for hours worked in excess of the statutory maximum set forth in Section 7 (a) of the Fair Labor Standards Act for which he has not already been compensated, must be determined by adding to his $27.00 weekly wage the sum of $5.00 per week, being the reasonable value of lodging,

and 75c per week, being the reasonable value of laundry service furnished, as aforesaid, and dividing the sum thereof by the number of hours which the Court may find plaintiff worked during the particular work-weeks in question.

10.

Wherefore, having answered herein, defendant prays that plaintiff take nothing by reason of this suit, and that defendant go hence without day and recover its costs; and, in the alternative that plaintiff's claim be held excessive, and credits granted as prayed for hereinabove; and for such other and further relief, general and special, to which defendants may be justly entitled.

THOMPSON & BARWISE,
Attorneys for Defendant,
Swift and Company.
By B. V. THOMPSON,
Of Counse.

Office Address:
800 Fort Worth Club Building,
Fort Worth, Texas.

INTERVENTION OF W. W. ROUSEY, ET AL.

14 Filed June 20, 1941.

(Title Omitted.)

To the Honorable Judge of said Court:

I.

Come now W. W. Rousey, E. Phennell, H. Millican, R. Roark, Tom Dennis and Ted Hayes, who are citizens of

the State of Texas, residing at Fort Worth, Tarrant County, Texas, and within said Judicial District, and leave of the Court having been first sought and obtained to intervene and or to be made parties plaintiff herein, seek to recover from the defendant unpaid overtime compensation in the several sums and amounts hereinafter set out, and an additional equal amount of liquidated damages, pursuant to Section 16 (b) of the Fair Labor Standards Act of 1938, and for reasonable attorney fees provided by said Act, (Pub. No. 718, 75th. Cong.; 52 Stat. 1060) hereinafter referred to as the Act, and plead respectively as follows:

II.

For the sake of brevity, these plaintiffs (interveners) adopt as their own, all the material allegations set forth in the plaintiff Skidmore's petition, or complaint, filed herein, insofar as same applies to these interveners (plaintiffs), especially paragraphs II to V, inclusive, also paragraphs VII and VIII thereof, as fully and to all intents and purposes as though herein set out in full.

III.

These plaintiffs (interveners) further allege that during the time they and each of them worked for the defendant from October 24th, 1938, the effective date of said Act, to and including Saturday, April 19th, 1941, inclusive, their hourly and weekly wage, also overtime compensation, were fixed solely by the defendant, and was the sum of $27.00 per work-week of 44, 42, and 40 hours respectively, and is all they have each received from the defendant up to the date of the filing hereof, for such services actually rendered to the defendant during said period, and that they are still in the service of the defendant in said capacities and performing the same hours of service, and these plaintiffs say that defendant is indebted to them, and

each of them, for overtime compensation provided by said Act, as is set forth in the following schedules, viz:

Claim of W. W. Rousey.

(Paid Vacations Deducted.).

Oct. 24, 1938, to May 2, 1939—24 weeks:

Worked 102 hours per week.

44 hours @ .6136 per hr.	27.00	
58 hours @ time and one-half, 92c per hour	53.36	
24 weeks @ 53.36 per week		$1,280.64

May 2, 1939, to Oct. 24, 1939—24 weeks:

Worked 95.5 hours per week.

44 hours @ .6136 per hr.	27.00	
51.5 hrs. @ time and one-half, 92c per hr.	47.38	
24 weeks @ 47.38 per week		1,137.12

Oct. 24, 1939, to Oct. 24, 1940—50 weeks:

Worked 95.5 hours per week.

42 hrs. @ .64 per hr.	27.00	
53.5 hrs. @ time one-half, 96c per hr.	51.36	
50 weeks @ 51.36 per week		2,568.00

Oct. 24, 1940, to April 19, 1941—23 weeks:

Worked 95.5 hours per week.

40 hrs. @ .675 per hr.	27.00	
55.5 hrs. @ time and one-half, $1.01 per hr.	56.05	
23 weeks @ 56.05 per week		1,289.15
Total Overtime Due Said Rousey to April 19, 1941		$6,274.91
Plus Liquidated Damages		6,274.91
Total		$12,549.82

Claim of E. Phenell.

(Paid Vacations Deducted.)

Jan. 3, 1939, to May 2, 1939—17 weeks:
Worked 102 hours per week.
44 hrs. @ .6136 per hr. $27.00
58 hrs. @ time and one-half, 92c per hr. 53.36
17 weeks @ 53.36 per week ..... $ 907.12

May 2, 1939, to Oct. 24, 1939—21 weeks:
Worked 95.5 hours per week.
44 hrs. @ .6136 per hr. 27.00
51.5 hrs. @ time and one-half, 92c per hr. 47.38
21 weeks @ 47.38 per week 994.98

Oct. 24, 1939, to Oct. 24, 1940—50 weeks:
Worked 95.5 hours per week.
42 hrs. @ .64 per hr. 27.00
53.5 hrs. @ time and one-half, 96c per hr. 51.36
50 weeks @ 51.36 per week 2,568.00

Oct. 24, 1940, to April 19, 1941—19 weeks:
Worked 95.5 hours per week.
40 hrs. @ .675 per hr. 27.00
55.5 hrs. @ time and one-half, $1.01 per hr. 56.05
19 weeks @ 56.05 per week 1,064.95

Total Overtime Due said Phenell to April 19, 1941 ..... $5,535.05
Plus Liquidated Damages 5,535.05

Total $11,070.10

Claim of H. Millican.

(Paid Vacations Deducted.)

Oct. 24, 1938, to May 2, 1939—26 weeks:
Worked 102 hours per week.
44 hrs. @ .6477 per hr. 28.50
58 hrs. @ time and one-half, 97c per hr. 56.26
25 weeks @ 56.26 per week 1,406.50

May 2, 1939, to Oct. 24, 1939—24 weeks:
Worked 95.5 hrs. per week.
44 hrs. @ .6477 per hr. 28.50
51.5 hrs. @ time and one-half, 97c per hr. 49.95
24 weeks @ 49.95 per week $1,198.80

Oct. 24, 1939, to Oct. 24, 1940—50 weeks:
Worked 95.5 hrs. per week.
42 hrs. @ .6785 per hr. 28.50
53.5 hrs. @ time and one-half, $1.02 per hr. 54.57
50 weeks @ 54.57 per week 2,728.50

Oct. 24, 1940, to April 19, 1941—23 weeks:
Worked 95.5 hrs. per week.
40 hrs. @ .7125 per hr. 28.50
55.5 hrs. @ time and one-half, $1.07 per hr. 59.38
23 weeks @ 59.38 per week 1,365.74

Total Overtime Due Said Millican to April 19, 1941 ..... $6,699.54
Plus Liquidated Damages 6,699.54

Total $13,399.08

Claim of R. Roark.

(Paid Vacations Deducted.)

Oct. 24, 1938, to May 2, 1939—25 weeks:
Worked 102 hrs. per week.
44 hours @ .6136 per hr. 27.00
58 hrs. @ time and one-half, 92c per hr. 53.36
25 weeks @ 53.36 per week $1,334.00

May 2, 1939, to Oct. 24, 1939—25 weeks:
Worked 95.5 hrs. per week.
44 hrs. @ .6136 per hr. 27.00
51.5 hrs. @ time and one-half, 92c per hr. 47.38
25 weeks @ 47.38 per week 1,184.50

Oct. 24, 1939, to Oct. 24, 1940—50 weeks:
Worked 95.5 hrs. per week.
42 hrs. @ .64 per hr. 27.00
53.5 hrs. @ time one-half, 96c per hr. 51.36
50 weeks @ 51.36 per week 2,568.00

Oct. 24, 1940, to April 19, 1941—22 weeks:
Worked 95.5 hrs. per week.
40 hrs. @ .675 per hr. 27.00
55.5 hrs. @ time and one-half, $1.01 per hr. 56.05
22 weeks @ 56.05 per week 1,233.10

Total Overtime Due Said Roark to April 19, 1941 $6,319.60
Plus Liquidated Damages 6,319.60

Total $12,639.20

Claim of Tom Dennis.

(Paid Vacations Deducted.)

Oct. 24, 1938, to May 2, 1939—24 weeks:
Worked 102 hrs. per week.
44 hrs. @ .6136 per hr. 27.00
58 hrs. @ time and one-half, 92c per hr. 53.36
24 weeks @ 53.36 per week $1,280.6

May 2, 1939, to Oct. 24, 1939—23 weeks:
Worked 95.5 hrs. per week.
44 hrs. @ .6136 per hr. 27.00
51.5 hrs. @ time and one-half, 92c per hr. 47.38
23 weeks @ 47.38 per week 1,089.7

Oct. 24, 1939, to Oct. 24, 1940—49 weeks:
Worked 95.5 hrs. per week.
42 hrs. @ .64 per hr. 27.00
53.5 hrs. @ time one-half, 96c per hr. .. 51.36
49 weeks @ 51.36 per week 2,516.6

Oct. 24, 1940, to April 19, 1941—23 weeks:
Worked 95.5 hrs. per week.
40 hrs. @ .675 per hr. 27.00
55.5 hrs. @ time and one-half, $1.01 per hr. 56.05
23 weeks @ 56.05 per week ..... 1,289.

Total Overtime Due Said Dennis to April 19, 1941 ..... $6,176.
Plus Liquidated Damages ..... 6,176.

Total $12,352

Claim of Ted Hayes.

(Paid Vacations Deducted.)

March 7, 1939, to May 2, 1939—8 weeks:

Worked 102 hrs. per week.		
44 hrs. @ .6136 per hr.	27.00	
58 hrs. @ time and one-half, 92¢ per hr.	53.36	
8 weeks @ 53.36 per week		426.88

May 2, 1939, to Oct. 24, 1939—23 weeks:

Worked 95.5 hrs. per week.		
44 hrs. @ .6136 per hr.	27.00	
51.5 hrs. @ time and one-half, 92¢ per hr.	47.38	
23 weeks @ 47.38 per week		1,089.74

Oct. 24, 1939, to Oct. 24, 1940—50 weeks:

Worked 95.5 hrs. per week.		
42 hrs. @ .64 per hr.	27.00	
53.5 hrs. @ time and one-half, 96¢ per hr.	51.36	
50 weeks @ 51.36 per week		2,568.00

Oct. 24, 1940, to April 19, 1941—22 weeks:

Worked 95.5 hrs. per week.		
40 hrs. @ .675 per hr.	27.00	
55.5 hrs. @ time and one-half, $1.01 per hr.	56.05	
22 weeks @ 56.05 per week		1,233.10

Total Overtime Due Said Hayes to April 19, 1941	$5,317.72
Plus Liquidated Damages	5,317.72
Total	$10,635.44

IV

Said above named claimants aver that, after the fil
of the claim of the said plaintiff, Jim Skidmore, the
fendant, Swift & Company, raised and or increased
salaries of all its employees, including these interven
plaintiffs, and that, as to them, their weekly salaries we
on Monday, the 21st. day of April, 1941, increased in
amount of $2.00 per week, making their regular wee
salary for the same services theretofore performed,
sum of $29.00 per week; That notwithstanding such
crease, these plaintiffs (interveners) are still entitle
overtime compensation as is provided by said Fair La
Standards Act of 1938, in such sums and amounts as
be, by mathematical calculations, determined, and
which they each also sue herein, in addition to their o
damages above alleged.

Wherefore, these intervening plaintiffs, and each
them, pray judgment of the Court that they, and eac
them, recover of and from the defendant, Swift & C
pany, for any and all overtime compensation to which
may show themselves entitled upon a trial hereof,
cluding liquidated damages and reasonable attorneys'
provided in said Fair Labor Standards Act of 1938,
for all costs of suit, and for general and special r
provided by law in such cases, either at law or in eq

TOMMY FORBIS and
DEE ESTES,
By TOMMY FORBIS,
Attorneys for said interv
and or plaintiffs

Address: Fort Worth, Texas.

ANSWER OF DEFENDANT, SWIFT & COMPANY TO THE COMPLAINT OF W. W. ROUSEY, E. PHENNELL, R. ROARK, TED HAYES, H. MILLICAN AND TOM DENNIS, PLAINTIFF INTERVENERS.

21 Filed July 10, 1941.

(Title Omitted.)

Now Comes Swift and Company, defendant in the above entitled and numbered cause, and for answer to the Complaint of W. W. Rousey, E. Phennell, R. Roark and Ted Hayes, and for answer to the Complaint of H. Millican and Tom Dennis, plaintiff interveners herein, would respectfully show the Court as follows, to-wit:

Defendant's Answer to the Intervention of W. W. Rousey, E. Phenneli, R. Roark and Ted Hayes, as to the Above Interveners (Plaintiffs).

1.

Defendant adopts and makes a part hereof, as though fully set out herein, all the material allegations set forth in its First Amended Original Answer heretofore filed herein to plaintiff, Skidmore's Complaint heretofore filed herein, in so far as same apply to the above interveners (plaintiffs).

2.

Defendant denies the allegations of paragraph 3 of the intervention.

3.

Defendant admits that the salaries of the above intervening plaintiffs were increased $2.00 per week, on the 21st

day of April, 1941, as set forth in paragraph 4 of their intervention, but denies the remaining allegations and prayer of said interveners.

Defendant's Answer to the Intervention of H. Millican and Tom Dennis, as to the Above Interveners (Plaintiffs):

1.

Defendant adopts and makes a part hereof, as though fully set out herein, all the material allegations set forth in its First Amended Original Answer heretofore filed herein, to plaintiff Skidmore's Complaint heretofore filed herein in so far as same apply to the above interveners (plaintiffs), specifically adopting the allegations in paragraph 1 and 2 of said Answer.

2.

As to paragraph 7 of Skidmore's Complaint, if adopted by interveners, H. Millican and Tom Dennis, defendant denies all the allegations thereof but with reference to the allegations of sub-paragraph (c), it admits that interveners, H. Millican and Tom Dennis were required to remain at the Fire Hall on defendant's premises, subject to call in the event of an emergency, such as fire, flood, or other casualty, during certain periods of time set forth in paragraphs 5 and 6 of defendant's First Amended Original Answer to Skidmore's Complaint, filed herein which are hereby adopted by reference thereto; however, defendant denies that said interveners were required to be on duty continuously, as alleged, or for the purpose alleged.

3.

Defendant denies the allegations of paragraph 3 of the intervention.

4.

Defendant admits that the salaries of the above intervening plaintiffs were increased $2.00 per week, on the 21st day of April, 1941, as set forth in paragraph 4 of their intervention, but denies the remaining allegations and prayer of said interveners.

5.

Defendant denies that said interveners, H. Millican and Tom Dennis were engaged in interstate commerce, or in the production of goods for interstate commerce, and denies that the Fair Labor Standards Act of 1938 is applicable to their cause of action.

Defendant's Plea of Limitations to the Causes of Action of Interveners, W. W. Rousey, E. Phennell, R. Roark, Ted Hayes, H. Millican and Tom Dennis.

Defendant says that all those parts of the causes of action of the above named interveners, if any they have, accruing more than two years before the commencement of this suit, are barred by the statute of limitations of the State of Texas applicable thereto, being Revised Statutes 1925, Article 5528.

Wherefore, having answered herein, defendant prays that the above named interveners take nothing by reason of their suit, and that defendant go hence without day and recover its costs; and, in the alternative, that their claim be held excessive and credits granted as prayed for

in defendant's First Amended Original Answer to plaintiff Skidmore's Complaint, in so far as same are applicable to the claims asserted by these interveners, and for such other and further relief, general and special, to which defendant may be justly entitled.

THOMPSON & BARWISE,
Attorneys for Defendant,
Swift & Company.
By B. V. THOMPSON,
Of Counsel.

Office Address:
800 Fort Worth Club Bldg.,
Fort Worth, Texas.

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24 MEMORANDUM OPINION.

Filed July 23, 1942.

(Title Omitted.)

This is a case under the Fair Labor Standards Act of 1938. It is a suit for overtime, based on alleged night work. The facts are all stipulated. The defendant does a general packing business, purchasing, handling, slaughtering, dressing, processing, selling and distributing livestock in interstate commerce. The regular day time work of plaintiffs, Dennis and Millican, was in general fire hall duties for the defendant which mainly consisted of keeping the fire hall and all fire fighting equipment, including the sprinkler system, in good condition, and answering fire calls. The regular day time work of plaintiffs Skidmore, Rousey, Phennell, Hayes and Roark was running the defendant's elevators, but certain nights were required to stay in the fire hall and respond to such calls as came in. The practical effect was that plaintiffs alike

took their turn at sleeping at the fire hall certain nights out of the week, the time they were there and awake being spent pursuing whatever pleasurable pursuits, or personal duties, they cared for. At all of such times, however, they were subject to fire calls, for which they were paid per call, from the effective date of the Act up to January 1, 1940, 50 cents and thereafter at 64 cents. For their regular work they were paid weekly salaries, running from $27.00 to $29.00. The hours they were at regular work, the hours off for meals, off from regular duty, off nights at their homes, or wherever they wanted to be, the number of fire calls answered, what they were paid for them, and what each received each week, was all accurately kept and set forth in the stipulation. For their allotted time at the fire hall, they were required to be there. It was their duty as much as performing their regular work, only that, except for such emergency calls, which were few, they could spend their time, "talking, reading, bathing, dressing, shaving, sleeping, playing pool, dominoes, checkers and other games, listening to the radio".

Of course we know pursuing such pleasurable occupations or performing such personal chores, does not constitute work. But does the fact they were subject to calls, though rare, make such hours, so spent, work hours under the Act for which overtime compensation is due them? That is the initial question. I do not think so. The Administrator's ruling on this subject strikes me as right:

"In some cases employees are engaged in active work for part of the day but because of the nature of the job are also required to be on call for 24 hours a day. Thus, for example, a pumper of a stripper well often resides on the premises of his employer. The pumper engages in oiling the pump each day and doing any other necessary work around the well. In the event that the pump stops (at any time during the day or night) the pumper must

start it up again. Similarly, caretakers, custodians, or watchmen of lumber camps during the off season when the camp is closed, live on the premises of the employer, have a regular routine of duty but are subject to call at any time in the event of an emergency. The fact that the employee makes his home at his employer's place of business in these cases does not mean that the employee is necessarily working 24 hours a day. In the ordinary course of events the employee has a normal night's sleep, has ample time in which to eat his meals, and has a certain amount of time for relaxation and entirely private pursuits. In some cases the employee may be free to come and go during certain periods. Thus, here again the facts may justify the conclusion that the employee is not working at all times during which he is subject to call in the event of an emergency, and a reasonable computation of working hours in the situation will be accepted by the Division." (Interpretative Bulletin No. 13, Paragraph 7, 2 Labor Law Service, page 32,402, Paragraph 32,713.)

These authorities also are helpful:

Gordell vs. H. F. Wilcox Oil & Gas Company, 206 Wage and Hour Reporter of November 3, 1941; Clifton vs. London Mines & Milling Company, 4 Labor Cases Paragraph 60,699; Muldowney vs. Seaburg Elevator Company, Inc., 4 Labor Cases, 61,515.

Plaintiffs' counsel rely more upon the nightwatchmen, police, and firemen cases, such as these:

Fleming vs. Swift & Co., 4 Whr 628; Fleming vs. Rex Oil Co., 4 Whr 628, Nov. 7, Mich. U. S. Dist. Ct.; Campbell vs. Superior Decalcomaina Co., 31 F. Supp. 663, 41 Whr 628; MKT. vs. US., 231 US. 112; CR&P Ry. Co. vs. U.S., 253 US. 555; Travis vs. Ray, 4 WHR 530, 41 F. Supp. 6; Interpretive Bulletin of W&H Admr. #13, Par. 2, 4, 5, 6, 7.

Those cases do not control here. Of course it is often true that waiting time or even subject to call time should be treated as work, such as MKT. vs. US., supra, and other cases cited by plaintiffs.

This holding eliminates the necessity of passing on a number of other questions, some of them novel and interesting, among them, how the regular rate of pay of these men would have been arrived at, if I had allowed such call time as overtime.

For the reasons stated, I find for defendant. A judgment may be drawn for my signature.

JAMES C. WILSON,
United States District Judge.

July 20, 1942.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION OF COURT, ACCORDANCE RULE 52 F. R. C. P.

27 Filed August 13, 1942.

(Title Omitted.)

Statement, Nature of Action:

This is a civil action under the Fair Labor Standards Act of 1938, wherein plaintiffs, as employees of defendant, seek to recover alleged unpaid overtime compensation for night work, also liquidated damages and attorneys' fees provided by the Act, the total amount sued for by the seven plaintiffs being approximately $77,000.00. The period during which plaintiffs' claims accrued was from

October 24, 1938, to April 19, 1941, or two and one-half years.

Defendant denied the existence of the alleged unpaid overtime compensation and the asserted right to recover liquidated damages and attorneys' fees; it denied that the agreed weekly wage was for a work week of a regular or certain number of hours, determined either by agreement or custom; and alleged that it had heretofore paid plaintiffs for all their work at a lawful rate.

Defendant also pleaded the two-year statute of limitations, being Revised Statutes of Texas 1925, Article 5528, to all those parts of plaintiffs' causes of action occurring more than two years before the commencement of this suit.

The case came on for trial in regular order on December 9, 1941, and was submitted to the Court without a jury on an agreed statement of facts, whereupon the Court, having duly considered same and the argument of counsel thereon, and having examined the written briefs filed herein; and having taken the case under advisement, makes and files the following Findings of Fact and Conclusions of Law, fowit:

Findings of Fact.

(1) Defendant owns and operates a general packing house business in Fort Worth, Tarrant County, Texas, and was at all times referred to herein engaged in such business, including the purchase, handling, slaughtering, dressing, processing, sale and distribution of livestock in interstate commerce.

(2) Plaintiffs, Tom Dennis and H. Millican, employees of defendant, were engaged exclusively during the period

involved, in general fire hall duties which consisted of keeping in proper condition the plant fire fighting equipment such as hose, sprinkler system, extinguishers and barrels.

(3) Plaintiffs Skidmore, Rousey, Phennell, Hayes and Roark, employees of defendant, were engaged in operating elevators in the plant and acting as relief men for Dennis and Millican in general fire hall duties.

(4) All plaintiffs usually worked in the plant, at their aforesaid duties, for approximately eight hours a day during five days a week, and were required to remain in the fire hall, or within hailing distance, subject to call in the event of a fire alarm, from four to five nights per week, but had no work or duties to perform during the time they were required to remain in or within hailing distance of the fire hall, except in answering fire alarms, which were infrequent, and usually required only 15 to 30 minutes time of one or two men to answer.

(5) No actual fires occurred, and the time required for answering alarms, caused for instance by a rusty plug or leak in the sprinkler system, in which event an alarm automatically sounded, was generally about 15 to 30 minutes, occasionally as much as one hour.

Millican answered no alarms whatever. Dennis answered thirteen alarms during the period involved, of which nine required 15 to 30 minutes time, and four required 30 to 60 minutes of his time. He therefore answered an alarm once every 2 and 3 10ths months. Skidmore answered an alarm requiring 15 to 30 minutes time about every 2 and 1 2 months. Rousey answered only two alarms, and Phennell and Hayes answered only one alarm, each requiring 15 to 30 minutes of their time during the entire period of time involved. Roark answered six

alarms, each requiring about 15 to 30 minutes of his time or about one every five months.

(6) Plaintiffs were each paid a weekly salary running from $27.60 to $29.00 per week, and, in addition, they were paid for answering fire alarms the sum of fifty cents for each alarm until January 1, 1940, and thereafter sixty-four cents for each alarm.

(7) Plaintiffs occupied their time in general fire hall duties, or as elevator operators or relief men from 7:00 A. M. to 3:30 P. M., five days a week, except for a mid-day lunch period of thirty minutes each day. At other times they were required to stay in or close by the fire hall, subject to call in the event of a fire alarm, except that, in addition to the mid-day lunch period, they had one hour each morning, two hours each night, two whole days and from two to three nights each week for meals, relaxation and entirely private pursuits, being free during these times to come and go as they pleased.

The brick fire hall building maintained by defendant on its premises was equipped with sleeping quarters, steam-heated and air conditioned rooms, a pool table, domino table and radio for the convenience and recreation of plaintiffs, who had ample time for sleeping in the fire hall and occupied their time during the hours they were required to remain there in taking, reading, bathing, dressing, shaving, sleeping, playing pool, dominos, checkers and other games, and listening to the radio.

(8) None of the plaintiffs worked in general fire hall duties, consisting of keeping in proper condition the plant fire fighting equipment, etc., or as elevator operators, or as relief men, more than the maximum 44 or 42 hours provided by the Act, but after October 24, 1940, when the 40 hour work week provision of the Wage and Hour Law

became effective, there were a few occasions—about a dozen or more—during the entire period of time involved, when defendant paid, and one of the plaintiffs accepted, additional compensation for work performed as elevator operators and relief men in excess of 40 hours per week, at a rate equal to 68c per hour for each such excess hour, and on a few holidays one of the plaintiffs was paid double time.

Conclusions of Law.

(1) The time plaintiffs spent in the fire hall subject to call to answer fire alarms does not constitute hours worked, for which overtime compensation is due them under the Fair Labor Standards Act, as interpreted by the Administrator and the Courts.

(2) Plaintiffs have been compensated at a lawful rate for all of their work in general fire hall duties, such as keeping in proper condition the plant fire-fighting equipment such as hose, sprinkler system, extinguishers and barrels, and as elevator operators and relief men.

(3) In view of the above conclusions of law, it is unnecessary to decide the other questions in the case, such as the computation of the regular rate of pay, defendant's plea of limitations, etc.

Therefore, in accordance with the foregoing Findings of Fact and Conclusions of Law, judgment will be entered herein that plaintiffs take nothing by reason of their suit against defendant, and that said defendant recover its costs.

Counsel will prepare and submit an appropriate judgment.

JAMES C. WILSON,
United States District Judge

July 30, 1942.

31 FINAL JUDGMENT.

Filed August 1, 1942.

(Title Omitted.)

On December 9, 1941, came on to be heard the above entitled and numbered cause, and plaintiffs appeared in person and by and through their attorneys of record, and defendant also appeared by and through its representatives and attorneys of record, and a trial by jury having been waived by all parties, all matters of fact as well as of law were submitted to the Court for consideration, and the Court, after having heard the pleadings, evidence and argument of counsel and having examined the written briefs filed herein and having taken the case under advisement, is of the opinion that the facts and the law are with the defendant and that plaintiffs should not recover in this cause:

It Is Therefore Ordered, Adjudged and Decreed That plaintiffs Jim Skidmore, W. W. Rouse, E. Phennell, H. Millican, R. Roark, Tom Dennis and Ted Hayes, take nothing by reason of their suit against Swift and Company, an Illinois corporation, defendant herein, and that said defendant do have and recover of and from plaintiffs, jointly and severally, its costs in this behalf expended, for all of which let execution issue. To all of which action of the Court the plaintiffs hereby give notice to appeal to the Fifth Circuit Court of Appeals of the United States.

Dated July 30, A. D. 1942.

JAMES C. WILSON,
United States District Judge.

Approved as to form:
TOMMY FORBIS,
SAMUELS, FOSTER, BROWN & McGEE,
Attorneys for plaintiffs.

32 NOTICE OF APPEAL.

Filed August 10, 1942.

In the District Court of the United States for the Northern District of Texas, Forth Worth Division.

Jim Skidmore, et al.,
vs. Civil No. 269.
Swift and Company.

To the Honorable James C. Wilson, Judge of the said Court:

Notice is hereby given that Jim Skidmore, W. W. Ramsey, E. Phennell, H. Millican, R. Roark, Tom Dennis and Ted Hays, all plaintiffs in the above styled and numbered cause, hereby appeal to the Circuit Court of Appeals for the Fifth Circuit from the final judgment entered in this action on or about the 31st day of July, 1942.

SAMUELS-FOSTER-BROWN & McGEE,
(Samuels-Foster-Brown & McGee)
Attorneys for Plaintiffs.

1605 Fair Bldg.,
Fort Worth, Texas.

AGREED STATEMENT OF FACTS.

33 Filed October 24, 1942.

(Title Omitted.)

The Following Facts are Agreed by the Parties Executing this Instrument to be True and Correct upon the Trial of this Cause, to-wit:

1. Plaintiffs brought this action to recover from defendant alleged unpaid overtime compensation, liquidated damages and attorney's fees provided in the Fair Labor Standards Act of 1938.

2. Defendant owns and operates a general packing house business in Fort Worth, Tarrant County, Texas, and was at all times material herein engaged in such business, including the purchase, handling, slaughtering, dressing, processing, sale and distribution of livestock in Interstate Commerce.

3. Tom Dennis and H. Millican were engaged exclusively during the period covered by this case, in general fire hall duties, which consisted of checking and maintaining in proper condition the plant fire equipment, such as hose, sprinkler system, extinguishers and barrels.

In addition to the above men, defendant employed five other workmen elsewhere in its plant, namely, Skidmore, Rousey, Phennell, Hayes and Roark, whose duties consisted of operating elevators in the plant and acting as relief men for the aforesaid two men engaged in general fire hall duties.

Defendant for a long time prior to, and continuously since October 24, 1938, maintained on its premises a brick

building known as a fire hall. All of these men worked in the plant as aforesaid, and slept or otherwise spent their time at the fire hall according to the schedule of hours appearing hereinafter. Their aforesaid work usually occupied their time from 7:00 A. M. to 3:30 P. M., except for a mid-day period of 30 minutes when they were permitted time off for lunch.

These plaintiffs were employed by defendant under oral agreements whereby, in addition to their daytime work as elevator operators, or while engaged in performing general fire inspection duties, they agreed to remain in the fire hall and stay in it or within hailing distance, subject to call, in the event of fire or other casualty, but were not required to perform any specific tasks during these periods of time, except in answering alarms. For the performance of these specific tasks plaintiffs were paid for the time spent on same as set forth in the schedules hereinafter appearing.

During the entire period of time involved herein, plaintiffs had no work or duties to perform during the time they were required to remain in or within hailing distance of the fire hall, except in answering certain fire alarms, as shown in the schedules hereinafter appearing, and had ample time for sleeping.

The fire hall building was equipped with sleeping quarters, steam heated and air-conditioned rooms, a pool table, dining table and radio, for the convenience and recreation of its occupants.

Each of the plaintiffs, if permitted to testify over defendant's objections at the trial, which are hereby reserved, would say that he maintained a residence where he slept, except when he slept at the fire hall according to the schedules hereinafter appearing.

Tom Dennis, Assistant Foreman, was paid a weekly cash salary of $27.00 until May 24, 1940, and thereafter $29.00, to April 19, 1941. H. Mulhern was paid a weekly cash salary of $23.50. Skidmore, Phennell, Rousey, Hayes and Roark were each paid a weekly cash wage of $27.00 per week. In addition the men were paid for answering fire alarms as shown hereinafter.

Cases of Jim Skidmore, W. W. Rousey, E. Phennell, R. Roark and Ted Hayes.

Period Oct. 24, 1938 to May 2, 1939 (44 Hour Law in effect)

		Hours
Typical schedule of hours of plaintiffs covering each day of a 7 day week		168
Monday:		
Midnight to 6:00 A. M.	Fire Hall	6
6:00 A. M. to 7:00 A. M.	Breakfast (time off)	1
7:00 A. M. to 3:30 P. M.	Operate elevator or general relief	8
Mid-day lunch period	Time off	1½
3:30 P. M. to 5:30 P. M.	Supper (time off)	2
5:30 P. M. to Midnight	Fire Hall	6½
Tuesday:		
Midnight to 6:00 A. M.	Fire Hall	6
6:00 A. M. to 7:00 A. M.	Breakfast (time off)	1
7:00 A. M. to 3:30 P. M.	Operate elevator or general relief	8
Mid-day lunch period	Time off	1½
3:30 P. M. to 5:30 P. M.	Fire Hall	2

Wednesday:		
5:30 P. M. Tuesday to		
5:30 P. M. Wednesday	Time off	24
5:30 P. M. to Midnight	Fire Hall	6½
Thursday:		
Midnight to 6:00 A. M.	Fire Hall	6
6:00 A. M. to 7:00 A. M.	Breakfast (time off)	1
7:00 A. M. to 3:30 P. M.	Oil tate elevator or general relief.	8
Midday lunch period	Time off	½
3:30 P. M. to 5:30 P. M.	Supper (time off)	2
5:30 P. M. to Midnight	Fire Hall	6½
Friday:		
Midnight to 6:00 A. M.	Fire Hall	6
6:00 A. M. to 7:00 A. M.	Breakfast (time off)	1
7:00 A. M. to 3:30 P. M.	Oil tate elevator or general relief.	8
Midday lunch period	Time off	½
3:30 P. M. to 5:30 P. M.	Fire Hall	2
5:30 P. M. to Midnight	Time Off	6½
Saturday:		

6:00 A. M. to 7:00 A. M.	Breakfast (time off)	1	
7:00 A. M. to 5:00 P. M.	Operate elevator or general relief	9½	
Mid-day lunch period	Time off	½	
5:00 P. M. to 5:30 P. M.	Fire Hall	½	
Sunday:			
5:30 P. M. Saturday to 5:30 P. M. Sunday	Time off	24	
5:30 P. M. to Midnight	Fire Hall	6½	
		—	168 41

Cases of Skidmore, Rousey, Phennell, Roark and Hayes; (Continued).

1. (a) The term "Fire Hall" following certain periods of hours in the above schedule, means these employees were required to be in or close by the Fire Hall during the hours specified, subject to call in the event of emergencies, such as fire alarms (the only material emergencies occurring herein), but were not required to perform any work and had no duties whatever, except in the aforesaid emergency calls. They occupied their time during these hours in talking, reading, bathing, dressing, shaving, sleeping, playing pool, dominos, checkers and other games, listening to the radio.

(b) The term "time off" following certain periods of hours in the above schedule means that during said periods these employees had no work or duties whatever to perform, nor were they required to remain in or near the fire hall, but were free to come and go as they pleased.

(c) The term "operate elevator or general relief" following certain periods of hours in the above schedule, means that during these periods these employees were engaged in operating elevators in defendant's plant, or in general relief work, such as relieving another elevator operator or inspecting and caring for plant equipment, such as hose, sprinkler system, extinguishers and barrels.

2. (a) The above schedule is typical only, and does not mean that these employees each adhered to this identical schedule—they had days off in rotation; otherwise, their schedule of hours was the same as indicated in the typical schedule.

(b) The same schedule (October 24, 1938 to May 2, 1939) applies to the periods May 2, 1939 to October 24,

1939, and October 24, 1939 to October 24, 1940, while these men were employed, except they had an additional one-half night off per week during the last two periods stated.

(c) The same schedule (October 24, 1938 to May 2, 1939) applies to the period from October 24, 1940 to April 30, 1941, while these men were employed, except they had an additional one-half night off, had 1½ hours less work as elevator operators, and stayed in the Fire Hall 1½ hours more per week, between 3:30 and 5:00 P. M.

3. (a) During the various periods for which claims are made, these men were each paid a regular weekly wage of $27.00.

(b) In addition, they were paid for answering each fire alarm, as follows:

From October 24, 1938 to Jan. 1, 1940 ..... 50 cents)
From January 1, 1940 to Oct. 24, 1940 ..... 64 cents)

(Answered no alarms thereafter.)

(c) No actual fires occurred, and the time required for answering alarms, caused for instance by a rusty plug or leak in the sprinkler system, in which event an alarm automatically sounded, was generally about 15 to 30 minutes, occasionally as much as one hour.

(d) The only docking for absence from duties as elevator operators occurred in the cases of Skidmore, Rousey, Phennell and Hayes, was on the basis of $5.40 per day until January 1, 1940, and thereafter 64 cents per hour, if the absence involved less than a full day.

4. The actual number of weeks worked by these men during the periods for which claims are made, was as follows:

Period of Claim	Skidmore	Rousey	Pfennell	Roark	Hayes
Oct. 24, 1938 to May 2, 1939	22 weeks until 3-28-39 5 weeks after 3-28-39	24 weeks	16 weeks	27 weeks	8 weeks
May 2, 1939 to Oct. 24, 1939	24 weeks	7 weeks until 6-20-39 15 weeks after 6-20-39	6 weeks until 6-20-39 18 weeks after 6-20-39	5 weeks until 6-20-39 18 weeks after 6-20-39	7 weeks until 6-20-39 16 weeks after 6-20-39
Oct. 24, 1939 to Oct. 24, 1940	41 weeks to 8-16-40 (Transferred to Car Dept.)	48 weeks	50 weeks	50 weeks	50 weeks
Oct. 24, 1940 to Apr. 19, 1941	0 weeks	23 weeks	19 weeks	25 weeks	25 weeks

5. During the periods for which claims are made, the only emergencies occurring were a number of fire alarms, which these men were required to answer during certain weeks, and during those weeks they answered said alarms and performed certain duties for certain periods of time, and were paid as follows:

	Week Ending	Time Answering Alarm	Work Operating Elevator or General Relief	Wage
Skidmore—				
	11-18-38	15 to 30 minutes	42½ hours	$27.50
	6-30-39	15 to 30 minutes	43 hours	27.50
	8- 4-39	15 to 30 minutes	41½ hours	27.50
	9-29-39	15 to 30 minutes	41½ hours	27.50
	10-27-39	15 to 30 minutes	41½ hours	27.50
	11-10-39	15 to 30 minutes	41½ hours	27.50
	1-26-40	15 to 30 minutes	41½ hours	27.64
	2- 9-40	15 to 30 minutes	41½ hours	27.64
Rousey—				
	3-10-39	15 to 30 minutes	42½ hours	27.50
	2-23-40	15 to 30 minutes	41½ hours	27.64
Phennell—				
	4-14-39	15 to 30 minutes	41½ hours	27.50
Roark—				
	11-18-38	15 to 30 minutes	41½ hours	27.50
	2-17-39	15 to 30 minutes	42½ hours	27.50
	3-10-39	15 to 30 minutes	42½ hours	27.50
	10-27-39	15 to 30 minutes	41½ hours	27.50
	2- 9-40	15 to 30 minutes	41½ hours	27.64
	10-18-40	15 to 30 minutes	42 hours	27.64
Hayes—				
	8-11-39	15 to 30 minutes	42 hours	27.50

Note: (a) The balance of the time of these men for the specific weeks indicated, was spent according to the above agreed schedule of hours.

Cases of Skidmore, Rousey, Phennell, Roark and Hayes.

Hours Worked Per Week and Method of Pay.

Period October 24, 1938, to May 2, 1939, and May 2, 1939, to October 24, 1939 (44 Hour Law in Effect):

Worked as elevator operators and general relief men—41½ Hours per week—usually	Paid in Cash $27.00 per week regardless of hours worked.
Worked as elevator operators and general relief men—42½ to 43 hours per week—rarely (In 11 separate instances one man worked 42½ to 43 hours per week.)	
Worked as elevator operators and general relief men more than 44 hours per week—never	

Period October 24, 1939, to October 24, 1940, (42 Hour Law in Effect):

Worked as elevator operators and general relief men—41½ Hours per week—usually	Paid in Cash $27.00 per week regardless of hours worked.
Worked as elevator operators and general relief men—42 Hours per week—rarely (In 46 separate instances one man worked 42 hours per week.)	
Worked as elevator operators and general relief men more than 42 hours per week—never	

Period October 24, 1940, to April 19, 1941, (40 Hour Law in Effect):

	Paid in Cash
Worked as elevator operators and general relief men—40 hours per week—usually	$27.00

Some of these men worked as elevator operators and general relief men, more than 40 hours per week, as follows:

	Week Ending	Hours	Pay
Phennell	4-4-41	41	$27.68
	1-3-41	48	37.80
Rousey	12-6-40	41	27.68
	2-14-41	41	27.68
	2-28-41	42	33.75
	12-27-40	48	37.80
	1-3-41	48	37.80
Hayes	12-6-40	41	27.68
	2-28-41	48	37.80
Roark	1-24-41	44	29.70
	12-27-40	48	37.80
	1-3-41	48	37.80
	1-31-41	48	32.40
	3-14-41	48	32.40
	3-21-41	48	32.40

Note: Double time was paid for holidays in the above schedule.

Note: The men were paid $27.00 per week in the above schedules, plus amounts paid for answering fire alarms.

Cases of H. Millican and Tom Dennis.

Period Oct. 24, 1938 to May 2, 1939 (44 Hour Law in effect)

Typical schedule of hours of plaintiffs covering each day of a 7-day week ..... Hours 163

Monday:

		Hours
Midnight to 6:00 A. M.	Fire Hall	6
6:00 A. M. to 7:00 A. M.	Breakfast (time off)	1
7:00 A. M. to 3:30 P. M.	General Fire Hall duties	8
Mid-day lunch period	Time off	½
3:30 P. M. to 5:30 P. M.	Supper (time off)	2
5:30 P. M. to Midnight	Fire Hall	6½

Tuesday:

Midnight to 6:00 A. M.	Fire Hall	6
6:00 A. M. to 7:00 A. M.	Breakfast (time off)	1
7:00 A. M. to 3:30 P. M.	General Fire Hall duties	8
Mid-day lunch period	Time off	½
3:30 P. M. to 5:30 P. M.	Fire Hall	2

Wednesday:

5:30 P. M. Tuesday to 5:30 P. M. Wednesday.	Time off	24
5:30 P. M. to Midnight	Fire Hall	6½

Thursday:

Midnight to 6:00 A. M.	Fire Hall	6
6:00 A. M. to 7:00 A. M.	Breakfast (time off)	1
7:00 A. M. to 3:30 P. M.	General Fire Hall duties	8
Mid-day lunch period	Time off	½
3:30 P. M. to 5:30 P. M.	Supper (time off)	2
5:30 P. M. to Midnight	Fire Hall	6½

Friday:

Midnight to 6:00 A. M.	Fire Hall	6
6:00 A. M. to 7:00 A. M.	Breakfast (time off)	1
7:00 A. M. to 3:30 P. M.	General Fire Hall duties	8
Mid-day lunch period	Time off	½
3:30 P. M. to 5:30 P. M.	Fire Hall	2
5:30 P. M. to Midnight	Time off	6½

Saturday:		
Midnight to 6.00 A. M.	Fire Hall	6
6.00 A. M. to 7.00 A. M.	Breakfast (time off)	1
7.00 A. M. to 5.00 P. M.	General Fire Hall duties	9½
Meal-day lunch period	Time off	1
5.00 P. M. to 5.30 P. M.	Fire Hall	½
Sunday:		
5.30 P. M. Saturday to 5.30 P. M. Sunday	Time off	24
5.30 P. M. to Midnight	Fire Hall	6½
		163

50

Cases of H. Millican and Tom Dennis-Continued.

1. (a) The term "Fire Hall" following certain periods of hours in the above schedule, means these employees were required to be in or close by the Fire Hall during the hours specified, subject to call in the event of emergencies, such as fire alarms (the only material emergencies occurring herein), but were not required to perform any work and had no duties whatever, except in the aforesaid emergencies. They occupied their time during these hours in talking, reading, bathing, dressing, shaving, sleeping, playing pool, dominos, checkers and other games, listening to the radio, and for such other purposes as they desired.

(b) The term "time off" following certain periods of hours in the above schedule means that during said periods these employees had no work or duties whatever to perform, nor were they required to remain in or near the fire hall, but were free to come and go as they pleased.

(c) The term "general fire hall duties" following certain periods of hours in the above schedule means that during these periods these employees were engaged in inspecting and caring for plant equipment, such as hose, sprinkler system, extinguishers and barrels.

2. (a) The above schedule is typical only—these employees had days off in rotation; otherwise, their schedule of hours was the same as indicated in the typical schedule.

(b) The same schedule (October 24, 1938, to May 2, 1939) applies to the periods May 2, 1939 to October 24, 1939, and October 24, 1939 to October 24, 1940, while these men were employed, except they had an additional one-half night off per week during the last two periods stated.

(c) The same schedule (October 24, 1938 to May 2, 1939) applies to the period from October 24, 1940 to April 19, 1941, while these men were employed, except they had an additional one-half night off, had one and one-half hours less work on general fire hall duties, and stayed in

the Fire Hall one and one-half hours more per week, between 3:30 and 5:00 P. M.

3. (a) During the various periods for which claims are made, Tom Dennis was paid a regular weekly salary of $27.00 until May 24, 1940, and thereafter $29.00 to April 19, 1941; and H. Millican was paid a regular weekly salary of $28.50 until April, 19, 1941.

(b) In addition, Tom Dennis was paid for answering each fire alarm as follows:

From Oct. 24, 1938 to Jan. 1, 1940 ..... 50 cents)
From Jan. 1, 1940 to Apr. 12, 1940 ..... 64 cents)
(Answered no alarms thereafter.)

(c) H. Millican did not answer any fire alarms from the time he was employed until and including April 19, 1941.

4. The actual number of weeks worked by these men during the period for which claims are made, was as follows:

Period of Claim	Tom Dennis	H. Millican
Oct. 24, 1938 to May 2, 1939	24 weeks	27 weeks
May 2, 1939 to Oct. 24, 1939	7 weeks until 6-20-39 18 weeks after 6-20-39	8 weeks until 6-20-39 16 weeks after 6-20-39
Oct. 24, 1939 to Oct. 24, 1940	50 weeks	50 weeks
Oct. 24, 1940 to Apr. 19, 1941	25 weeks	23 weeks

5. During the periods for which claims are made, the only emergencies occurring were a number of fire alarms, none of which H. Millican was required to answer. Tom Dennis was required to answer these fire alarms during certain weeks, and during those weeks he answered said alarms and performed certain duties for certain periods of time, and was paid as follows:

Tom Dennis— Week Ending	Time Answering Alarm	Work Performing General Fire Hall Duties	Salary
2-17-39	15 to 30 minutes	42½ hours	$27.50
3-10-39	15 to 30 minutes	41½ hours	27.50
5-12-39	15 to 30 minutes	42½ hours	27.50
6-23-39	15 to 30 minutes	42½ hours	27.50
6-30-39	30 to 60 minutes 2 alarms	42½ hours	28.00
7-21-39	15 to 30 minutes	42½ hours	27.50
8-4-39	15 to 30 minutes	42½ hours	27.50
9-29-39	15 to 30 minutes	42½ hours	27.50
10-13-39	30 to 60 minutes 2 alarms	41½ hours	28.00
11-10-39	15 to 30 minutes	41½ hours	27.50
4-12-40	15 to 30 minutes	41½ hours	27.64

Note: (a) The balance of Tom Dennis' time for the specific weeks indicated above was spent according to the above agreed schedule of hours.

(b) No actual fires. Pay for answering alarms fifty cents (50c) for each alarm until January 1, 1940; thereafter, 64 cents for each alarm.

Cases of Millican and Dennis.

Hours Worked Per Week and Method of Pay.

Period October 24, 1938, to May 2, 1939, and May 2, 1939, to October 24, 1939, (44 Hour Law in Effect):

	Paid in Cash
Worked as firemen, exclusively—41½ hours per week—usually	Dennis: $27.00 Millican: $28.50
Worked as firemen, exclusively—42 to 43½ hours per week—rarely .. (In 5 separate instances Dennis worked 42½ to 43½ hours per week, and Millican worked 42 hours per week 8 separate instances.)	
Worked as firemen, more than 44 hours per week—never	

Period October 24, 1939, to October 24, 1940 (42 Hour Law in Effect):

	Paid in Cash
Worked as firemen, exclusively—41½ hours per week—usually	Dennis: $27.00 to 5-24-40 $29.00 thereafter
Worked as firemen, exclusively—42 hours per week—rarely ..... (In 6 separate instances Dennis worked 42 hours per week.)	Millican: $28.50
Worked as firemen more than 42 hours per week—never	

Period October 24, 1940, to April 19, 1941 (40 Hour Law in Effect):

	Paid in Cash
These men worked as firemen, exclusively 40 hours per week—usually	Dennis: $29.00 Millican: $28.50

They worked more than 40 hours per week in the following instances:

	Week Ending	Hours	Pay
Dennis	12-20-40	41	$29.00
	2-28-41	41	29.00
	1-10-41	44	29.00
	1-24-41	44	29.00
Millican	12-20-40	41	28.50
	3-28-41	41	28.50
	4-18-41	41	28.50
	1-10-41	44	28.50

Explanation:

These men were paid their regular salaries regardless of whether they worked 35, 40, 41 or 44 hours per week.

Note: In addition to $27.00 paid weekly, Tom Dennis was paid for answering fire alarms, as stated on page 13.

The parties hereto may introduce additional testimony not in conflict with, or in contradiction of, the facts herein stated.

H. MILLICAN,
TOM DENNIS,
JIM SKIDMORE,
W. W. ROUSEY,
E. PHENNELL,
R. ROARK,
TED HAYES,
Plaintiffs.

(S.) By R. CURTIS McBROOM,
TOMMY FORBIS,
Their Attorneys of Record.

SWIFT AND COMPANY,
Defendant.

(S.) By THOMPSON & BARWISE,
Its Attorneys of Record.

51 SUPPLEMENTAL AGREEMENT.

In explanation of the schedule appearing at the bottom of page nine of this agreement purporting to show certain work performed by plaintiffs Skidmore, Rousey, Phennell, Roark and Hayes as elevator operators and general relief men, totaling forty hours per week usually, and more than forty hours per week in some instances, it is agreed that subsequent to the time the oral contracts of employment were made, and on or about October 24, 1940 when the forty-hour work week provision of the wage and hour law became effective, defendant paid and plaintiffs accepted additional compensation for work performed as elevator operators and as general relief men in excess of forty hours per week, at a rate equal to 68 cents per hour for each such excess hour.

Nothing in the agreement is to be construed or argued as an agreement that any part of the wages or salaries paid plaintiffs represented pay for any particular part of their work or time spent in the fire hall, these matters being left for the determination of the Court.

It is further agreed that the amount of the attorneys fees will be left to the discretion of the Court.

We agree to the above.

(S.) R. CURTIS McBROOM.
(S.) TOMMY FORBIS.
Attorneys for Plaintiffs.
(S.) THOMPSON & BARWISE.
Attorneys for defendant.

52 BOND.

Filed October 20, 1942.

(Title Omitted.)

Know All Men By These Presents: That we, Raymond Roark, as principal, and Jack Love and Tommy Forbis, as sureties, are held and firmly bound unto the above named Swift and Company, in the sum of $250.00; to which payment, well and truly to be made, we bind ourselves jointly and severally, our heirs, executors, successors, and assigns, respectively, firmly by these presents.

Sealed with our seals and dated this 19th day of October, 1942.

Whereas, the plaintiff, Raymond Roark, has prosecuted his appeal to the United States Circuit Court of Appeals for the Fifth Circuit to reverse the judgment entered in said cause by the United States District Court for the Northern District of Texas, on the 1st day of August, 1942, against said plaintiff.

Now, Therefore, the condition of this obligation, is such, that if the above named plaintiff, Raymond Roark, shall prosecute his appeal to effect and answer all costs if he fails to make good his plea, then this obligation to be void, otherwise in full force and virtue.

R. ROARK,
Principal,
JACK LOVE,
Surety.
TOMMY FORBIS,
Surety.

State of Texas,
County of Tarrant.

On this 19th day of October, A. D. 1942, before me, the undersigned, a Notary Public within and for said county and state, personally appeared Raymond Roark, Jack Love and Tommy Forbis, known to me to be the persons who are described in and who executed the foregoing instrument, and they each acknowledged to me that they executed the same.

ETHEL J. MURPHY,
(Seal) Notary Public.

State of Texas,
County of Tarrant.

Jack Love and Tommy Forbis, sureties on the annexed bond, being duly sworn, depose and say that they are residents of and freeholders in said Northern District of Texas, that they are worth at least the sum of $1000.00, over and above all their just debts and liabilities, in property subject to execution and sale, and that their property consists of real estate, located at Fort Worth, Tarrant County, Texas.

TOMMY FORBIS;
Sureties.

Subscribed and sworn to before me, the undersigned, this 19th day of October, 1942.

ETHEL J. MURPHY,
(Seal) Notary Public.

ORDER GRANTING MOTION FOR EXTENSION OF TIME.

54 Filed Sept. 19, 1942.

(Title Omitted.)

Plaintiffs' motion, filed September 17, 1942, requesting extension of time for perfecting appeal in the subject case, is hereby granted. The time for filing the transcript in the Circuit Court of Appeals for the Fifth Circuit is here extended to October 5th, 1942.

Dated this 18 day of September, 1942.

JAMES C. WILSON,
Judge.

ORDER GRANTING MOTION FOR EXTENSION OF TIME.

55 Filed October 2, 1942

(Title Omitted.)

Plaintiffs' motion, filed October 2, 1942, requesting extension of time for perfecting appeal in the subject case, is hereby granted. The time for filing the transcript in the Circuit Court of Appeals for the Fifth Circuit is here extended to October 28, 1942.

Dated this 2nd day of October, 1942.

JAMES C. WILSON,
Judge.

DESIGNATION OF RECORD FOR APPEAL TO CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

56 Filed September 26, 1942.

(Title Omitted.)

Complaint, filed March 28, 1941.

First Amended Answer, filed May 5, 1941.

Intervention of W. W. Rousey, et al, filed June 20, 1941.

Defendant's Answer to Intervention, filed July 10, 1941.

Opinion, filed July 23, 1942.

Judgment, filed August 1, 1942.

Notice of Appeal, filed August 10, 1942.

Findings of Fact and Conclusions of Law, filed August 13, 1942.

Order Extending Time for Filing Record on Appeal, filed September 19, 1942.

Statement of Facts—Stipulation.

CURTIS McBROOM,
Attorney for Plaintiff.

57 CLERK'S CERTIFICATE.

I, GEO. W. PARKER, Clerk of the District Court of the United States in and for the Northern District of Texas, do hereby certify that the above and foregoing is a full, true and correct copy and transcript of record of all papers called for in the designation, which is a part of this transcript, in Civil Action No. 269, on the docket of aforesaid Court, wherein Jim Skidmore, et al, are appellants, and Swift and Company, is appellee, as fully as the same remain on file and of record in my office at Fort Worth, Texas.

Given under my hand and seal of office at Fort Worth, Texas, this 26th day of October, A. D. 1942.

GEO. W. PARKER,
Clerk.

(Seal)

By RIVE J. McGREW,
Deputy.

[fol. 62] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of May 18th, 1943

No. 10493

JIM SKIDMORE, ET AL.

versus

SWIFT AND COMPANY

On this day this cause was called, and, after argument by R. Curtis McBroom, Esq., for appellants, and B. V. Thompson, Esq., for appellee, was submitted to the Court.

[fol. 63] OPINION OF THE COURT — Filed June 1, 1943

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 10493

JIM SKIDMORE, ET AL., Appellants,

versus

SWIFT AND COMPANY, Appellee

Appeal from the District Court of the United States for the Northern District of Texas — June 1, 1943

Before Hutcheson and Waller, Circuit Judges, and Cox, District Judge.

WALLER, Circuit Judge: Appellants sued for overtime compensation under the Fair Labor Standards Act (U. S. C., Title 29, Sec. 201, et seq.), including attorney fees and liquidated damages, totalling approximately $77,000.00. All facts were stipulated, a jury waived, and judgment ren-
[fol. 64] dered for defendant. No questions as to coverage of minimum wages were involved.

Plaintiffs were firemen or elevator operators or relief firemen, none of whom regularly worked more than the

minimum hours per week, unless time spent at the fire hall subject to call in case of an alarm is held to be "working".

Plaintiffs orally agreed that in addition to their regular eight hour duties they would remain in the fire hall, or within hailing distance thereof, three and one half to four nights each week so as to be available in the event of an alarm. On these nights they were not required to perform any tasks except to answer alarms, for which they received extra pay.

No fires occurred during the period under consideration, but there were a few occasions when a defect in the sprinkler system would automatically set off an alarm.

Plaintiff Millican never answered an alarm. Dennis answered one alarm on the average of every two and three-tenths months. Skidmore answered one on the average of each two and one-half months. Ronsey averaged one alarm in each fifteen months. Phennell and Hayes each answered only one alarm in two and one half years. Roark averaged answering one alarm every five months. The time consumed in answering an alarm was ordinarily from fifteen to thirty minutes.

Plaintiffs claim the right to be compensated in overtime wages for the entire time they were in the fire hall, available in case of an alarm.

The fire hall was equipped with steam heated, air conditioned sleeping quarters, with a pool table, domino tables and radio for the comfort, convenience, and relaxation of the [fol. 66] men. Plaintiffs could retire at their pleasure and sleep throughout the night unless one of the rare alarms sounded, in which event they responded and were paid for so doing.

These facts give rise to the inquiry whether under the Fair Labor Standards Act an employee is working when he is sleeping, playing pool, dominoes, or the radio, [illegible] because he is required to stay on the employer's premises and be available in case of an alarm.

The mere fact that a servant has agreed to live on the premises does not justify the conclusion that he is engaged in employment every moment he is there. One must sleep whether at home or abroad, nor is he at work when he is asleep. The rule of long hours of toil is not pre-empted. The employee works eight hours during the day and is free, if allowed, to play, read, or sleep on nights in the hall according to the pleasure of each.

ly plaintiffs are not entitled to recover overtime
ation for sleeping.

raph 6 of Interpretative Bulletin No. 13 expresses
that a switchboard operator in a small telephone
, who has her bed alongside the switchboard, and
ng the night is sometimes awakened by the alarm
a call comes in, but who is able to get several
uninterrupted sleep every night, as experience
eral months can demonstrate, should have her
ours segregated from the hours worked. We think
pretation is correct.

t does not require payment of wages to an em
erely because he is away from home. Nor does
undertake to regulate or restrict reasonable and
agreements whereby an employee agrees to be
available if needed. "Working" is not synony
h "availability for work".

ffs, in their proof, have failed to segregate sleep
from non sleeping, pool, domino, and radio, play
Even if the plaintiffs had been entitled to re
hours spent in boredom, or waiting for bedtime,
n, the proof wholly fails to prove the actual hours
ent in sleeping, playing pool, dominoes, or radio,
shaving, bathing, or in any of said enterprises,
n of which was on the plaintiffs.

lgment below is

Affirmed.

JUDGMENT

tract from the Minutes of June 1st, 1943

No. 10493

JIM SKIDMORE, ET AL.

versus

SWIFT AND COMPANY

se came on to be heard on the transcript of the
on the District Court of the United States for the
District of Texas, and was argued by counsel;

ded Southwest Co. vs. McBride, 124 F. 2d 90
Co. vs. Bedfern, 124 F. 2d 172.

On consideration whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellants, Jim Skidmore, and others, and the sureties on the appeal bond herein, Jack Love and Tommy Forbis, be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

[fol. 68] Motion and Order Staying Mandate—Filed June 25, 1943

In the United States Circuit Court of Appeals for the Fifth Circuit

No. 10493

Jim Skidmore, et al., Appellants,

versus

Swift and Company, Appellee

Motion to Stay Issuance of Mandate

To the Honorable Justices of the United States Circuit Court of Appeals for the Fifth Circuit:

Your petitioners, Jim Skidmore, et al., appellants in the above styled and numbered cause, respectfully present this, their application for an order staying the execution and mandate of the decree of this Court, rendered in the above styled and numbered cause on the 21st day of June, 1943, under the provisions of Section 350 of Title 28 of the United States Code, to enable said petitioner to apply for and obtain a writ of certiorari from the Supreme Court of the United States.

The grounds upon which said petition for certiorari will be based are as follows:

1. That the decision rendered in this cause is on an important federal question which has not been, but should be, settled by the Supreme Court; and

2. That the decision rendered in this cause is in conflict with the decision of this Court and another Circuit Court of Appeals in cases involving the same matter.

Therefore, in view of the nature of the writ of certiorari sought, and the end sought to be accomplished thereby, no useful purpose would be served if the mandate or other process of this Court should issue before the Supreme Court has disposed of such petition, but would rather cause unnecessary complications and delay.

[fol. 69] Wherefore, Jim Skidmore, et al., appellants, pray that the mandate of this Court be stayed and withheld during the pendency of the said petition for writ of certiorari in the Supreme Court.

A copy of this motion has been given to Beverley Thompson, Attorney for Swift and Company, Appellee.

_____, Attorney for Jim Skidmore, et al., Appellants.

[fol. 70] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH DISTRICT

No. 10493

JIM SKIDMORE, et al., Appellants,

versus

SWIFT AND COMPANY, Appellee

On Consideration of the Application of the Appellants in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable Appellants to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, it Is Ordered that the issue of the mandate of this court in said cause be and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that the certiorari petition, record and brief have been filed, and that the proof of service of notice thereof under Paragraph 3 of Rule 38 of the Supreme Court has been given. It is fur-

ther ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this order, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done at New Orleans, La., this 25th day of June, 1943.

(Signed) Curtis L. Waller, United States Circuit Judge.

[fol. 71] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 72] Supreme Court of the United States

Order Allowing Certiorari—Filed May 29, 1944

The order denying certiorari is vacated and the petition for writ of certiorari herein to the United States Circuit Court of Appeals for the Fifth Circuit is granted and the case is transferred to the summary docket. The Solicitor General is invited to file a brief amicus curiae if he is so advised.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.